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Supreme Court, U.S.
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No. 365

In The
Supreme Court of the United States

October Term, 1958

DONALD GEORGE FLEMING,
Petitioner,

VERSUS

AETNA LIFE INSURANCE CO. ET AL.,
Respondents.

RESPONSE OF FRANCIS A. RETTENMEYER, EXECUTOR OF THE ESTATE OF JOSEPH A. RETTENMEYER, DECEASED, TO PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS, TENTH CIRCUIT

SAM J. ALLEN, III,
MORAUL BOSONETTO,
Sapulpa, Oklahoma,
Attorneys for Respondent, Francis A. Rettenmeyer, as Executor of the Estate of Joseph A. Rettenmeyer, Deceased.

OCTOBER, 1958.

KING LAW BRIEF CO., COMMERCE EXCHANGE BLDG., OKLAHOMA CITY—PHONE FO 5-2969

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DONALD GEORGE FLEMING, a minor, individually, and by LEONA HOLCOMB, as guardian,

Petitioner,

VERSUS

AETNA LIFE INSURANCE COMPANY, a Corporation; FRANCIS X. RETTENMEYER, Executor of the Estate of JOSEPH A. RETTENMEYER, Deceased; F. E. PENCE, VIRGIL F. SPRANKLE, GROVER D. STROTHER, A. N. MURPHY, JUSTIN W. FAHERTY, FIRST NATIONAL BANK AND TRUST COMPANY OF OKLAHOMA CITY, OKLAHOMA, LEONA HOLCOMB, individually, FRANK T. DENHAM, MAY CECILIA DENHAM, DOROTHY LEE DENHAM, a minor, CAROLYN DENHAM LUMLEY, MAY CECILIA DENHAM, as guardian of DOROTHY LEE DENHAM, a minor, GEORGE DENHAM, CLARENCE DENHAM, MARY JANE HOPKINS, nee SPRIGHT, and MARY ELLEN CASH,

Respondents.

RESPONSE OF FRANCIS X. RETTENMEYER, EXECUTOR OF THE ESTATE OF JOSEPH A. RETTENMEYER, DECEASED, TO PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS, TENTH CIRCUIT

STATEMENT OF THE CASE

The basic facts in this litigation are relatively simple. During her lifetime Rosa B. Wright Rettenmeyer was the owner of certain United States bonds of the approximate value of $191,864.64. These bonds were liquidated and the proceeds used to purchase from the Aetna Life Insurance Company an annuity, being No. AN-33409, for the sum of $162,606; and a single premium policy, being No. AN-1669203 for the sum of approximately $25,000.00. The payments under the first policy above referred to were to be made $1,000 per month to Rosa B. Wright Rettenmeyer during her lifetime. After her death, in event her husband, Joseph A. Rettenmeyer, survived her, the $1,000 monthly payments were to be paid to him; and after his death the $1,000 monthly payments were to be apportioned to her nephews and nieces, when due, as follows:

$123.07	Ellen Cash, niece
123.07	Rufus Denham, nephew
123.07	Marion Denham, nephew
123.08	Lewis Denham, nephew
123.07	Marion Rettenmeyer (widow of Forest Rettenmeyer, nephew)
123.08	Frank X. Rettenmeyer, nephew
123.08	Raymond D. Rettenmeyer, nephew

23.08 Frank T. Denham, nephew
23.08 Edward Denham, nephew
23.08 Clarence M. Denham, nephew
23.08 George N. Denham, nephew
23.08 Leona Denham Holcomb, niece
23.08 Mary Jane Hopkins, niece and adopted daughter.

It is this policy which is the subject of the interpleader action in the United States District Court for the Northern District of Oklahoma in cause No. 3502 by the Aetna Life Insurance Company against all the beneficiaries in said policy. This action was instituted on the 16th day of April, 1954.

Policy No. AN 1669203 on the life of Donald George Fleming became the subject of the action filed by the Aetna Life Insurance Company in the United States District Court for the Northern District of Oklahoma, on the — day of ——— 1954, being Cause No. 3503.

Rosa B. Wright Rettenmeyer died on the 12th day of December, 1952, after having received under the terms of said policy the sum of $24,000.00. The First National Bank and Trust Company of Oklahoma City was appointed executor of her estate, it having been designated as such under the terms of her will and two codicils which were admitted to probate without objection.

Joseph A. Rettenmeyer died on the 22nd day of March, 1954, having received under the terms of said policy fifteen monthly payments of $1,000 each. Francis X. Ret-

tenmeyer, his son, respondent herein was appointed executor of his estate.

On September 30th, 1953, Leona Holcomb, individually, Leona Holcomb as guardian of the person and estate of Donald George Fleming, a minor, Ed. Denham, Frank Denham, George Denham, Clarence Denham, and Mary Jane Wright Hopkins, filed a suit in the District Court of Creek County, Oklahoma, being cause No. 29092, against Joseph A. Rettenmeyer, the Aetna Life Insurance Company and others to recover the money derived from the bonds used to purchase Aetna Policy No. AN-33409; and on October 21st, 1953, the same parties instituted cause No. 29114 against Joseph A. Rettenmeyer, the Aetna Life Insurance Company and others, to recover the money derived from the bonds used to purchase Aetna policy No. 1669203; and on April 15th, 1954, they instituted cause No. 87402 in the District Court of Tulsa County, Oklahoma, against Joseph A. Rettenmeyer, the Aetna Life Insurance Company and others, to recover damages and punitive damages for the alleged conversion of the bonds which had been used to purchase both of the above referred to Aetna policies. For convenience, these parties shall hereafter be referred to as the Denhams.

Although case No. 87402 was pending at the time Aetna filed its complaint in interpleader in cause No. 3502, no specific mention was made of that case in the original temporary injunction issued by the trial court on April

16th, 1954. Thereafter, on June 23, 1954, Aetna filed its amendment to complaint in interpleader in case No. 3502 in which it specifically referred to case No. 87402 and attached a copy of the petition in case No. 87402 as a part of the amendment (Tr. 2—Reproduced Record Case No. 5056, In the United States Court of Appeals, pages 69 to 72).)

On November 12, 1954, the trial court entered an "Order Construing Restraining Order Heretofore Made" which was filed in case number 3502 on November 22, 1954. This order is referred to at page 3 of the transcript and is set forth at page 77 of the reproduced record in case number 5056. In that order, the trial court specifically enjoined the Denhams from prosecuting case number 87402 against Aetna in the following language, to-wit:

> "It is ordered, adjudged and decreed that the defendants Leona Holcomb, . . . be and they are hereby enjoined, and restrained from instituting any suit in any State Court, . . . and enjoins and restrains the prosecution of any suits or causes of actions against the plaintiff, Aetna Life Insurance Company including particularly, cause No. 29092 in the District Court of Creek County, State of Oklahoma, styled *Leona Holcomb et al.* v. *Aetna Life Insurance Company et al.*, and cause No. 87402 in the District Court of Tulsa County, State of Oklahoma, entitled, *Mary Jane Hopkins et al.* v. *Aetna Life Insurance Company et al.*, . . ."

On November 30, 1954, the Denhams filed their "Notice of Appeal" from this order, which notice contained the following language, to-wit:

> "Notice is hereby given plaintiff, Aetna Life Insurance Company, a corporation, that defendants (Denhams) hereby appeal to the United States Court of Appeals for the Tenth Circuit from the Order entered herein on the 22nd day of November, 1954, enjoining and restraining the prosecution of Cause No. 87402 in the District Court of Tulsa County, State of Oklahoma, entitled *Mary Jane Hopkins et al. v. Aetna Life Insurance Company et al.*, which Order is entitled 'Order Construing Restraining Order Heretofore Made'."

Thus, a direct issue was made in the Circuit Court as to the validity of the injunction issued by the trial court against the prosecution of case number 87402 by the Denhams as against Aetna. On August 3, 1955, an order was filed in the United States Court of Appeals in case number 5056 affirming the order of the trial court filed on November 22, 1954, in case number 3502 enjoining the prosecution of case number 87402 by the Denhams as against Aetna. Certiorari was subsequently denied by the Supreme Court and the facts and law determined in this phase of the case became finally adjudicated and are reported as the case of *Holcomb* v. *Aetna Life Insurance Company*, 228 F. 2d 75.

It will be recalled that while Francis X. Rettenmeyer, individually, was an original party to case number 3502 as a defendant, Francis X. Rettenmeyer, as executor, was not originally a party. On September 23, 1954, Francis X. Rettenmeyer, executor of the estate of Joseph A. Rettenmeyer, deceased, filed his motion for leave to

intervene and complaint in intervention which are referred to at page 3 of the tra script and set forth at page 76 of the reproduced record in case No. 5056. On November 19, 1954, the Honorable Royce H. Savage as trial judge in case number 3502 entered an order therein allowing Francis X. Rettenmeyer, executor, to intervene in that case *as of right*. This order was filed in the case on December 15, 1954, and is set forth at pages 3 and 4 of the transcript. It was unappealed and thus has become final.

Thereafter, Francis X. Rettenmeyer, executor, filed his application for a temporary injunction prohibiting the Denhams from prosecuting case number 87402 against him, and on July 25, 1956, the trial court entered a "Decree of Preliminary Injunction" in case number 3502 enjoining the Denhams from prosecuting case number 87402 against Francis X. Rettenmeyer, executor, pending the trial of case number 3502, which order is set forth at pages 30 to 33 of the transcript. Thereafter, this injunction was made permanent by judgment entered in case number 3502 on December 10, 1956, and filed therein on January 14, 1957, which appears at pages 46 to 52 of the transcript.

In view of the pleadings filed herein, and in cases numbered 3502, 3503, 29092, 29114 and 87402 by the various parties hereto; the admissions and stipulations of the various parties hereto in the pre-trial proceedings in case number 3502, and in other proceedings; and the

decision of this Court in the case of *Holcomb* v. *Aetna Life Insurance Company*, 228 F. 2d 75, it is assumed that the following are adjudicated or otherwise established as facts or law of this case:

1. The United States bonds described in the petition of plaintiffs in case number 87402 for the alleged conversion of which that action is prosecuted, are the bonds which were sold, and the proceeds of which were used to purchase Aetna Life Insurance Company policies numbered AN33409 and AN1-669-203.

2. Aetna has the right to maintain its interpleader actions in cases numbered 3502 and 3503 against the defendants named therein.

3. Aetna is entitled to an injunction prohibiting the plaintiffs in case number 87402 from prosecuting that action against it.

This then left but two questions for the Appellate Court to consider in deciding the correctness of the trial court's judgment as to that appellee:

1. Did the trial court properly permit Francis X. Rettenmeyer, executor, to intervene in case number 3502?

2. Did the trial court correctly enjoin the plaintiffs in case number 87402 from prosecuting that case against Francis X. Rettenmeyer, executor?

Both of these questions were resolved by the United States Court of Appeals for the Tenth Circuit in its opinion filed in Causes Nos. 5620 and 5621, on May 12th, 1958, affirming the judgment of the trial court. It is this judgment which petitioner now seeks to review.

ARGUMENT AND AUTHORITIES

If we understand the brief of petitioner no issue is raised as to the right of Francis X. Rettenmeyer as Executor to intervene in the trial court. For this reason we shall confine ourselves to a presentation of the correctness of the judgment of the court in enjoining the Denhams from prosecuting Cause No. 87402 in the District Court of Tulsa County, Oklahoma, against Francis X. Rettenmeyer as executor of the estate of Joseph A. Rettenmeyer, deceased.

-1-

The United States Court of Appeals, Tenth Circuit, properly affirmed the Judgment of the United States District Court enjoining the Denhams from prosecuting cause No. 87402 against Francis X. Rettenmeyer, as executor.

As has already been stated, it is assumed as a premise for the argument of this appellee that the trial court properly permanently enjoined these Denhams from prosecuting case number 87402 against Aetna. If for no other reason it became the law of this case when the decision of the Appellate Court in *Holcomb* v. *Aetna Life Insurance Company* 228 F. 2d 75 became final that:

(1) Aetna has the right to maintain an interpleader action as pleaded in case number 3502; and

(2) The temporary injunction in favor of Aetna against the prosecution of case number 87402 by the Denhams was properly granted.

It is a legal truism that a temporary injunction is based upon the pleadings, and inherent in any order issuing such an injunction is the judgment that should the party in whose favor the temporary injunction is granted establish his case as pleaded, he will be entitled to have that temporary injunction made permanent. Thus, if it be the law of this case that the trial court properly issued the temporary injunction against the prosecution of case number 87402 by the Denhams as against Aetna, it must also be the law of the case if Aetna established its case as pleaded, then Aetna is entitled to have the injunction made permanent. This is exactly what has happened. At the pre-trial proceedings in case number 3502 Judge Savage repeatedly attempted to get counsel for the Denhams to tender an issue as to the validity of the annuity policy which was the subject of that action. This they declined to do. In fact, Mr. Glenn O. Young, of counsel for the Denhams, made this statement at pre-trial, to-wit:

> "Now we assert here that there isn't any controversy between anybody, that the issuance of the policy —we say it was issued by Aetna; we say it is incontestable. We say there is no conflict among the parties who are designated as annuitants, as to who receives what. There is nothing under the policy that is in controversy at all. The beneficiaries under the policy —the identity of them is established. None of them are contending that the policy is invalid—they are not contending that one is entitled to a little more or a little less; they are not asking for a refund of any premiums that were paid prior to the date of the death of Rosa B. Wright Rettenmeyer—no such question is involved."

Therefore, the following colloquoy occurred between the court and Mr. Young, to wit (Tr. page 140):

> THE COURT: "• • • It is my view that the burden is not on Aetna to go forward with the proof, with the alleged—with respect to the alleged conversion of these bonds. We get into that question only in the event you tender the issue, in my judgment.
>
> MR. GLENN O. YOUNG: Aetna has not tendered that issue; neither have we."

Of course, both annuity policies were included as is reflected by the statement of the court at page 142 of the transcript, to-wit:

> THE COURT: "All right, I am going to enter judgment accordingly in both cases on both contracts, of course—with respect to the contract of which Fleming is the beneficiary there will be a declaratory judgment that the contract is valid and in full force and effect, and that Aetna will be required to pay to Fleming in accordance with the terms thereof, or to the beneficiaries in accordance with the terms thereof, and I believe the only—Donald George Fleming is the—
>
> MR. WOOLSEY: He is the beneficiary.
>
> THE COURT: Beneficiary under the contract."

Thus, on pre-trial when counsel for Denhams admitted that no issue was raised as to the conversion of the bonds by him and that the Aetna policy was a valid policy, Aetna had established its case; there was no fact issue left in the case.

It is our position that the same rule applied to Francis X. Rettenmeyer, executor. The temporary injunction

prohibiting the Denhams from prosecuting case number 87402 as against Francis X. Rettenmeyer, executor, was properly issued by the trial court; and, as in the case of Aetna, the pre-trial proceedings disposed of any fact issues between the parties so there was nothing left to do but for the trial court to make the injunction permanent.

The key to the problem is whether a final decision in case number 3502 will resolve the issues of case number 87402 between Francis X. Rettenmeyer, executor, and the Denhams. The essential fact on this issue is the identity of the bonds which purchased the annuities which are the subject of cases numbered 3502 and 3503, respectively, and those bonds the alleged conversion of which are the subject of case number 87402. Despite the protestations of counsel for the Denhams to the contrary, their own pleadings in cases numbered 3502, 29092, 29111 and 87402 establish this as a fact; and the decision of this Court in the case of *Holcomb v. Aetna Life Insurance Company*, 228 F. 2d 75, upon the issues raised in that case as set forth hereinbefore finally adjudicated it as a fact that the bonds in each case were one and the same. Thus, it is an established, adjudicated fact of this case that the bonds used to purchase the two annuity policies which are the subjects of cases numbered 3502 and 3503, respectively, are those same, identical bonds the alleged conversion of which are the subject of case number 87402.

The only fact issues in cause number 87402 are (1) whether Rosa B. Wright Rettenmeyer was competent to transact business at the time these policies were purchased; and (2) whether the proceeds from these bonds were used to purchase these policies with her knowledge and consent, or, whether she was overreached or defrauded in some manner in the transaction. Since the ultimate issue in case number 3502 is the validity of the annuity, these are also the only fact issues in that case. Before the trial court could make a determination as to the validity or invalidity of these policies, it had to dispose of the above issues, and in so doing it disposed of every issue in case number 87402. When counsel not only declined to render any issue on the pre-trial hearing of case number 3502, but as set forth above admitted that no issue was tendered as to the conversion of the bonds and further admitted the validity of the policy, all of the issues in case number 87402 were also resolved.

There was yet another factor to be considered in this matter. All of the beneficiaries under the annuity contract were parties to case number 3502 civil. The defendants Ellen Cash, Rufus Denham, Marion Denham and Louis Denham are not even parties to cause number 87402 and defendants Francis X. Rettenmeyer, Raymond D. Rettenmeyer and Marion Rettenmeyer although parties to that cause have not been served with summons. As they are non-residents of Oklahoma, it is highly doubtful that the

District Court of Tulsa County ever will acquire jurisdiction over them in that action. Thus, these parties will not and cannot be bound by a judgment in cause number 87402. The possibilities inherent in such a situation are obvious. A judgment might be obtained in case number 87402 which would be binding upon the parties to that case, but it would still be necessary to try case number 3502 civil because a judgment in case number 87402 could not bind the parties in case number 3502 civil who were not parties to case number 87402. It is conceivable that the court in case number 3502 civil on the same issues could enter a judgment directly contrary to the judgment in case number 87402. Thus, some of the beneficiaries under the annuity who were parties to case number 87402 would be bound by that judgment, whereas, other beneficiaries who were not parties to that action might be bound by a different judgment in another court—and all claiming under the same annuity contract. Manifestly, the litigation of the same controlling issues in different suits, in different courts with different parties would be an inefficient and disorderly administration of justice. The trial court properly prevented such judicial chaos by enjoining further proceedings in case number 87402.

In order to prevent needless friction between State and Federal courts Congress has adopted the policy that Federal courts, as a general rule, may not stay proceedings in State courts. This policy is enunciated in 28 U. S. C. A. § 2283 as follows:

"A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

This Court is, of course, aware of this Statute and is familiar with the three exceptions to its operation. Francis X. Rettenmeyer, executor, was entitled to an injunction under the first of these exceptions. A stay order is expressly authorized by an Act of Congress as is provided in 28 U. S. C. A. 2361 as follows:

"In any civil action of interpleader or in the nature of interpleader under Section 1335 of this Title, a district court may issue its process for all claimants and enter its order restraining them from instituting or prosecuting any proceedings in any State or United States court affecting the property, instrument or obligation involved in the interpleader action until further order of the court. Such process and order shall be returnable at such time as the court or judge thereof directs and shall be addressed to and served by the United States marshall for the respective districts where the claimants reside or may be found.

"Such district court shall hear and determine the case, and may discharge the plaintiff from further liability, make the injunction permanent, and make all appropriate orders to enforce its judgment."

Case number 3502 was certainly an action under Section 1335 and there can be no question that the action in cause number 87402 is one "affecting the property, instrument or obligation involved in the interpleader action."

In the case of *Tremies* v. *Sunshine Mining Co.*, 60 S. Ct. 11, 308 U. S. 66, 84 L. Ed. 85, the Superior Court of

Spokane County, Washington, awarded certain stock of the Sunshine Mining Company belonging to the estate of Amelia Pelkes to John Pelkes and his assignee, Evelyn Treinies. The district court of Shoshone County, Idaho, awarded this same stock to Katherine Mason. Treinies and Pelkes then filed suit against Mason in the Superior Court of Washington to quiet title to the stock and joined Sunshine as a party defendant. Sunshine then commenced an interpleader action and further proceedings in the quiet title suit were enjoined. Upon appeal to the Supreme Court of the United States it was held:

> "Neither are the provisions of Section 265 of the Judicial Code, 28 U. S. C. A. 379, applicable. That Section forbids a United States Court from staying proceedings in any State court. The Interpleader Act, passed subsequently, however, authorizes the enjoining parties to the interpleader from further prosecuting any suit in any State or United States court on account of the property involved. Such authority is essential to the protection of the interpleader jurisdiction and is a valid exercise of the judicial power."

In the case of *National Fire Ins. Co. v. Sanders* (C. C. A.—5th), 38 F. 2d 212, 214, 215, one W. D. Sanders was the owner of a house in De Kolb, Texas, which burned. The loss was adjusted by National at $7,850.00. After the fire but before adjustment, Armour Fertilizer Works filed suit in the municipal court of Chicago against Sanders on certain notes. A default judgment was obtained and garnishment proceedings instituted against National. Sanders advised National that the insurance proceeds were exempt

under Texas laws because the house was his homestead. National filed its bill in Federal Court impleading Armour and Sanders. The court held:

> "As to the first-mentioned conclusion, reliance is had on *Calloway* v. *Miles* (C. C. A.), 30 F. 2d 14. It may be conceded that the Statute does not enlarge the equitable right of interpleader, but neither does it restrict it. It is not necessary to seek any enlargement of equitable right from the Statute in this case. It is a fundamental principle of interpleader that its office is not so much to protect a party against double liability as against double vexation in respect to one liability. It is immaterial whether the danger apprehended comes from suits pending or merely threatened. In either case, a court of equity having jurisdiction over the parties may enjoin the institution or further prosecution of the suits and grant adequate relief to the stakeholder and adverse claimants to the fund. Pomeroy's Equity Jurisprudence (4th Ed.) par. 1320. Street's Federal Equity Practice, par. 2236. *Calloway* v. *Miles*, *supra*, is not persuasive as it does not give the effect to the fundamental principle of interpleader, that a bill will be to protect a party against double vexation.
>
> * * * * * * * * *
>
> Furthermore, it is well settled that a Federal court may issue an injunction to the parties litigant in a State court in order to preserve its jurisdiction properly attaching."

Perhaps the best example of the court restraining one impleaded party from prosecuting another in some other forum is the case of *Maryland Casualty Co.* v. *Glassell-Taylor & Anderson*, 68 F. Supp. 897, 898, 900. This was an action in the nature of interpleader by the Maryland Casualty Company against Glassell-Taylor & Robinson, a

partnership, John W. Harris, Inc. and others. Harris filed its answer and a cross claim against Glassell-Taylor & Robinson praying, among other things, for an injunction against Glassell-Taylor & Robinson staying prosecution of a suit by them against Harris in a State court of Louisiana. The court held:

> "The effect of the injunction granted the Casualty Co. in the present suit was to stay the several actions enumerated in the opinions of this court and the Court of Appeals, both in the State court and the Federal Court for the Eastern District of Louisiana, insofar as that company was concerned, but left the plaintiffs therein free to prosecute their claims to judgment against all others save the surety company."

From this it can be seen that the situation there was very similar to that in case number 3502. After discussing the reasons for granting such an injunction, the court stated in the last paragraph of its opinion as follows:

> "In view of the complication thus produced by the maintenance of the proceedings here while leaving those in the State court and the Federal Court for the Eastern District of Louisiana to be pursued, I feel constrained to grant the injunction sought by counter claimant, Harris, against Glassell and Workman."

Doubtlessly there is a dearth of authority on the particular question of whether the impleaded parties have the same right to have further proceedings in another forum involving the same issues as the interpleader action enjoined as against each other as the party instituting the interpleader action has against the impleaded parties be

cause the statutory language and logic itself dictate such a construction of the Statute. It is respectfully urged that to construe the Statute as authorizing the court to enjoin the parties impleaded from proceeding against the party instituting the interpleader action, but not as against each other would be an absurdity. Such a situation defeats the very purpose of the act which is to have the parties litigate their common issues in one forum and to avoid a multiplicity of lawsuits with its attendant confusion and possible conflicting judgments. It is further urged that as a party who intervened in case number 3502 as a matter of right Francis X. Rettenmeyer, executor, stood in the same position in this respect as the original parties in the case and that the same right to a stay of further proceedings against him in case number 87402 as did Aetna Life Insurance Company.

CONCLUSION

This case serves as a classic example of the situation which the Federal Statutes permitting interpleader and injunction against the proceedings in other cases were designed to remedy. The only basic issue which ever did exist in all of the cases 3502, 3503, 29092, 29114, and 87402 was simply whether the bonds of Rosa B. Wright Rettenmeyer used to purchase Aetna annuity policies AN33409 and AN1,669 302 were rightfully or wrongfully so used, and the pre-trial proceedings in cases 3502 and

3503 have definitely established that they were rightfully so used. Yet upon this basic issue three different suits were filed in two different District Courts of the State of Oklahoma. Not only was the United States Court for the Northern District of Oklahoma one that could give relief with the least amount of litigation, but in this situation it was the only court which could give complete relief. As aforesaid, Ellen Cash, Rufus Denham, Marion Denham and Louis Denham are not even parties to case number 87402 and Francis X. Rettenmeyer, individually, Raymond D. Rettenmeyer, and Marion Rettenmeyer, have not been served with process in case number 87402 and the court has not obtained jurisdiction over them in that case. As the latter group are non-residents of the State of Oklahoma, doubtlessly, it never will. However, the court in case number 3502 does have jurisdiction over all of these parties. Thus, regardless of what happens in case number 87402, case number 3502 had to be decided in order to adjudicate the rights of all parties. Therefore, not only is there a multiplicity of suits unless the prosecution of case number 87402 is enjoined, there even exists the possibility of conflicting judgments. Such an abhorent situation can be and has been prevented by the judgment of the trial court in case number 3502, and the United States Court of Appeals in cases Nos. 5620 and 5621, and it is respectfully urged that this judgment should be sus

tained by this Court, and the petition for certiorari should be denied.

Respectfully submitted,

SAM T. ALLEN, III,
MORAUL BOSONETTO,
Sapulpa, Oklahoma.
Attorneys for Respondent, Francis X. Rettenmeyer, as Executor of the Estate of Joseph A. Rettenmeyer, Deceased.

OCTOBER, 1958.